

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5607 of 1986

WITH

CIVIL APPLICATION NO 1762 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SC JAIN

Versus

SOUTH GUJARAT UNIVERSITY

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Appearance:

MR YOGESH VYAS for M/S TRIVEDI & GUPTA for Petitioner

MR SN SHELAT for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/04/98

ORAL JUDGEMENT

Under communication dated 23rd February, 1977 of the Registrar, South Gujarat University, respondent no.2 (hereinafter referred to as "the University"), the

petitioner was offered appointment as Professor in the Department of Rural Studies in the pay scale of Rs. 1550-2500. The appointment of the petitioner was to be on probation for a period of two years from the date of his joining. The petitioner accepted the said appointment. The petitioner, after completion of the probation period, was made a permanent employee in the year 1979. It appears that some time in the year 1981, the University created a post of Professor in Rural Studies attached to the respondent No.3 Bank. The said post was sponsored by the respondent No.3 Bank. The post was advertised, the petitioner applied for the post and was selected. The petitioner's appointment to the post of Professor in Rural Studies attached to the respondent No.3 Bank, was approved by the Syndicate of the University on the terms and conditions contained in its communication dated 16th June, 1981 (Annexure-E to the petition). One of the conditions was, the petitioner would not have any lien on the post of Professor in the Department of Rural Studies on which he was working at the relevant time and that the said post would be filled up by University on a permanent basis by a suitable incumbent. The petitioner was also informed that the petitioner would not be entitled to any other service benefits like Gratuity, Leave Travel Concession, Medical benefits, etc. except the Contributory Provident Fund. It appears that the petitioner represented against imposition of the said conditions and under his communication dated 19th June, 1981 (Annexure-F to the petition), submitted that he should have a right to lien to the post of Professor in the Department of Rural Studies in the University and shall also continue to receive other service benefits like Gratuity, Leave Travel Concession and medical benefits. He reiterated his request under communication dated 1st July, 1981 (Annexure-G to the petition). None the less the petitioner accepted the offer of appointment to the post of Professor of Rural Studies in the respondent No.3 Bank on 1st July, 1981. On 18th July, 1981, the University informed the petitioner that his representation was partially accepted and even while serving in the respondent No.3 Bank, he would be entitled to the benefit of Leave Travel Concession and the medical benefit. The University also assured that the question of renewal of his appointment would be decided by the Syndicate of the University on the basis of the recommendations of the Expert Committee appointed for the purpose. The University, however, reiterated that the petitioner would have no right to lien on the regular post of Professor in the Department of Rural Studies. It is borne out from the affidavit made by one Shri Vamanrao Yadav, Registrar

of the University that the post falling vacant on account of the petitioner's appointment in respondent No.3 Bank, was filled in by appointment of one Shri V.K.Madalia on 17th October, 1983, and on retirement of Shri Madalia on 15th October, 1993, one Dr. Shah has been appointed on the said post. Further, pending this petition, the petitioner has reached the age of superannuation sometime in the year 1990. On completion of his term with the respondent No.3 Bank, the petitioner applied for resuming duties in the University as Professor in the Department of Rural Studies. However, his request was turned down by the University under its communication dated 9th October, 1986 (Annexure-A to the petition), which is impugned herein. The Syndicate of the University also considered renewal of the appointment of the petitioner to the respondent No.3 Bank. However, the Syndicate resolved not to renew his appointment for a further period and the petitioner was relieved from the service of the University with effect from 22nd October, 1986. The decision of the Syndicate was communicated to the petitioner under its letter dated 22nd October, 1986 (Annexure-J-2 to the petition), which too is impugned herein.

Mr. Vyas, the learned advocate has appeared for the petitioner, and has submitted that the petitioner had a lien on the post of Professor in the Department of Rural Studies and on completion of his term of appointment with the respondent No.3 Bank, he had a right to resume duty as Professor in Rural Studies. Mr.Vyas has submitted that in absence of any specific rules of the University in this respect, the provisions made in the Bombay Civil Services Rules shall apply and in view of the provisions contained in Rules 19 to 21 of the BCS Rules, the petitioner had a lien on the said post. He has also submitted that in the similar circumstances, one Dr. Charan, Dr. Chavda and Dr. Pandya were permitted to retain lien to their original post in the University and the petitioner has been meted out a discriminatory treatment in respect of his right to lien. Mr. Vyas has also relied upon a communication dated 18th July, 1981 (Annexure-H to the petition), and has contended that in view of the said communication also, the petitioner is entitled to lien on the post of Professor in the Department of Rural Studies. Mr. Vyas has also relied upon the judgment of the Supreme Court in the matter of STATE OF HARYANA VS SHRI DES RAJ SANGAR & ANR { (1976) 2, SCC, 844 }

Mr. Mazgaonkar, the learned advocate has

appeared for the University. He has relied upon the communication dated 16th June, 1981 (Annexure-E to the petition) containing the terms and conditions of the offer of appointment to the post of Professor attached to the respondent No.3 Bank. The said terms specifically provide that the petitioner would have no right to lien. The said term was reiterated by the University in its communication dated 18th July, 1981. Mr. Mazgaonkar has submitted that the petitioner's appointment to the post of Professor attached to the respondent No.3 Bank was purely contractual and the petitioner was bound by the terms and conditions contained in the letter of offer. In spite of the said terms and conditions, the petitioner had willingly accepted the appointment to the post attached to the respondent No.3 Bank. He, therefore, was not entitled to lien to the regular post of Professor in Rural Studies. Besides, one Dr. Madalia was already appointed to the said post and was working as such. He has further submitted that the cases of Dr. Charan, Dr. Chavda and Dr. Pandya were entirely different from that of the petitioner and the petitioner can not claim right to lien on the basis of the said three cases. He has further submitted that there are no statutory rules governing the service conditions of the University employees which should entitle the petitioner to retain lien as is claimed by him.

I have considered the rival arguments advanced by Mr. Vyas as well as Mr. Mazgaonkar. It is evident that the petitioner applied for the post of Professor attached to the respondent No.3 Bank and was selected for the said post. The petitioner accepted the said appointment with full knowledge that it was a contractual appointment and that on completion of the period of contract, he would have no right to lien on the post of Professor of Rural Studies in the University, and that he would have no right to any other service benefits except that of Contributory Provident Fund. I am of the view that the petitioner is bound by the terms and conditions of his appointment and he can not claim right to lien contrary to the terms of his appointment to the post attached to the respondent No.3 Bank. Further Mr. Vyas has not been able to show any statutory provision governing the service conditions of the employees of the University which would entitle the petitioner to lien over the regular post of Professor in Rural Studies. I can not accept the argument of Mr. Vyas that in absence of any specific rules in the subject matter, the provisions contained in the BCS Rules should apply to the University employees. The contention deserves to be rejected. So far as the allegation of discrimination is concerned, it

is explained that Dr. Charan's services were demanded on loan by Centre for Social Studies for a specific project and for a specific period. The University accepted the request made by the said Centre and loaned the services of Dr. Charan to the said Centre. It is thus obvious that the University had loaned the services of Dr. Charan to the Centre for Social Studies for a specific project and therefore the question of terminating the lien would not arise. It is not disputed that Dr. Chavda had remained absent from service without leave for a long period as alleged by the petitioner. However, when he reported for duty, the post earlier held by him was vacant and his request for reinstatement in service was, therefore, accepted by the University. In the circumstances, it can not be said that Dr. Chavda was permitted to retain lien over the post inspite of his long absence from service. Dr. Pandya was appointed by the Government of Gujarat as Pro-Vice Chancellor when he was serving in the University as a Professor and Head of Department of Public Administration. On completion of his tenure as Pro Vice Chancellor, he was absorbed as a Professor and Head of Department of Public Administration. The facts in respect of Dr. Pandya are, therefore, quite different from those of the petitioner. In view of the above facts, it can not be said that the petitioner has been meted out discriminatory treatment as alleged by him. In the matter of State of Haryana (Supra), the Supreme Court held that in view of the relevant rules, the Government servant concerned was entitled to lien to the post permanently held by him. The said decision is rendered on the basis of the rules governing the said Government servant. In the present case, Mr. Vyas has not been able to point out any similar rule governing the service conditions of the petitioner. In absence of any specific rule, the petitioner can not claim right to lien contrary to the terms and conditions agreed upon by him as discussed hereinabove. The aforesaid judgment, therefore, shall have no applicability to the facts of the present case.

Pending this petition, the petitioner has also taken out a Civil Application No. 1762/90. He has claimed that inspite he is relieved from the University with effect from 22nd October 1986, the petitioner has not been paid many of his dues i.e. the petitioner has not been paid the amount of Provident Fund, Gratuity, Leave Encashment, difference of salary payable due to the revision in salary as per the recommendations of Mehrotra Pay Commission, and difference of HRA as a result of such pay revision.

Mr. Mazgaonkar has submitted that the petitioner has not applied for the Provident Fund amount due and payable to him and without there being a formal application for the same, the petitioner could not be paid the amount of Provident Fund. He, however, has assured that the petitioner will be paid the said amount expeditiously on his making an application for the same. Further, in view of the terms and conditions agreed upon by the petitioner, the petitioner is not entitled to Gratuity. Besides, at the time of joining the respondent No.3 Bank, the petitioner had served the University only for four years. The petitioner has not explained his claim in respect of arrears of salary and arrears of HRA pursuant to the pay revision recommended by Mehrotra Pay Commission. If the petitioner is entitled to any arrears of salary or HRA as claimed by him, he shall make an application to the University. In absence of any specific averments in this regard, this court can not issue directions to the University to pay any amount towards arrears of salary or arrears of HRA as claimed by the petitioner. The petitioner has also not established that under the relevant rules, the petitioner was entitled to the benefit of Leave Encashment. The court, therefore, can not issue direction to the University to pay the amount of Leave Encashment to the petitioner. However, in the event the petitioner is entitled to such an amount, and makes an application to the University, same shall be remitted to the petitioner as expeditiously as possible.

In view of the above discussion, I do not find any merit in any of the claims made by the petitioner. The petition is, therefore, dismissed. Rule is discharged. The petitioner shall bear the costs of this petition.

Civil Application No. 1762/90 is rejected.

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